

**Mountview Nursing and Rehabilitation Center, Inc.
and Pennsylvania Social Services Union, Local
668, Service Employees International Union,
AFL-CIO-CLC. Case 4-CA-21949**

July 13, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS DEVANEY
AND BROWNING

Upon a charge filed by the Union on August 4, 1993, the General Counsel of the National Labor Relations Board issued a complaint on November 30, 1993, against Mountview Nursing and Rehabilitation Center, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On June 13, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On June 16, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated May 10, 1994, notified the Respondent that unless an answer were received by May 17, 1994, a recommendation would be made to file a Motion for Summary Judgment.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Pennsylvania corporation, has been engaged in the operation of a nursing home in Duncannon, Pennsylvania. During the year preceding issuance of the complaint, the Respondent received gross revenues in excess of \$100,000 and purchased

and received goods valued in excess of \$3000 directly from points outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

In or about May 1993, the Respondent directed an employee at the facility to remove the employee's union button. In the spring of 1993, the Respondent told an employee at the facility that the Respondent's president had threatened employees that the Respondent would close the facility and turn it into a shirt factory before the Respondent would let the Union in. In or about spring 1993, the Respondent told employees at the facility that the Respondent's administrator did not want employees to wear union buttons. On or about June 24, 1993, the Respondent discharged its employee Edna Kumler because she supported and assisted the Union.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act. By discharging Edna Kumler, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(3) and (1) by discharging Edna Kumler, we shall order the Respondent to offer her immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, and to make her whole for any loss of earnings and other benefits suffered as a result of the discrimination against her. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be re-

quired to expunge from its files any and all references to the unlawful discharge, and to notify the discriminatee in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Mountview Nursing and Rehabilitation Center, Inc., Duncannon, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Directing any employee to remove the employee's union button.

(b) Telling any employee the Respondent's president had threatened employees that the Respondent would close the facility and turn it into a shirt factory before the Respondent would let the Union in.

(c) Telling employees that the Respondent's administrator does not want employees to wear union buttons.

(d) Discharging employee Edna Kumler or any other employee because he or she supported and assisted the Pennsylvania Social Services Union, Local 668, Service Employees International Union, AFL-CIO-CLC, or any other labor organization.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Edna Kumler immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) Make Edna Kumler whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, with interest, as set forth in the remedy section of this decision.

(c) Remove from its files any reference to the unlawful discharge and notify the employee in writing that this has been done and that the discharge will not be used against her in any way.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Duncannon, Pennsylvania, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Re-

gional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. July 13, 1994

William B. Gould IV, Chairman

Dennis M. Devaney, Member

Margaret A. Browning, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT direct any employee to remove the employee's union button.

WE WILL NOT tell any employee that our president had threatened employees that we would close the facility and turn it into a shirt factory before we would let the Union in.

WE WILL NOT tell employees that our administrator does not want employees to wear union buttons.

WE WILL NOT discharge Edna Kumler or any other employee because he or she supports or assists the Pennsylvania Social Services Union, Local 668, Service Employees International Union, AFL-CIO-CLC, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Edna Kumler immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL make Edna Kumler whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, with interest, as set forth in the remedy section of this decision.

WE WILL notify her that we have removed from our files any reference to her discharge and that the discharge will not be used against her in any way.

MOUNTVIEW NURSING AND REHABILITATION CENTER, INC.